



STATE OF WISCONSIN
Department of Employee Trust Funds
Eric O. Stanchfield
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax (608) 267-4549
TTY (608) 267-0676
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: April 21, 2004

TO: Wisconsin Deferred Compensation Board

FROM: Shelly Schueller, Director
Wisconsin Deferred Compensation Program

SUBJECT: Wisconsin Plan and Trust Document Amendment and Administrative Services
Contract Amendment: Domestic Relations Orders

Governor Doyle signed AB 642 into law on March 16, 2004, as 2003 Wisconsin Act 160. This law authorizes the Wisconsin Deferred Compensation (WDC) Program to divide participant accounts per a Domestic Relations Order (DRO). This cover memo contains the key features of Act 160 and an outline of the information needed to process WDC DROs.

As explained below, staff recommends that the Board approve revisions to the Wisconsin Plan and Trust document and an amendment to the Administrative Services Contract. Approving these changes will permit the WDC to begin processing DROs.

Key Features of Act 160

- The law permits up to 100% of a participant's assets in the WDC to be assigned to a spouse, former spouse, child or other dependent to satisfy a family support or marital property obligation.
- It is retroactive and relates to any marriage terminated after December 1, 2001.
- The Deferred Compensation Board must establish the requirements for a domestic relations order and the administrative procedure for dividing an account. The requirements must be included in "any ... plan and trust document" approved by the Board.

Plan and Trust Document Changes

Before the WDC may begin processing DRO requests, the Board must approve revisions to the State of Wisconsin Public Employees Deferred Compensation Plan and Trust. Recommended changes are highlighted in the attached Plan and Trust document. The revisions outlined on the attached pages describe what information must be submitted in order for a DRO to be processed and the rights of alternate payees.

Administrative Services Contract Amendment

In order to implement Act 160, the WDC Board will need to approve an amendment to the Administrative Services Contract with Nationwide Retirement Solutions (NRS) because the current contract does not address DROs. A draft of the proposed amendment to the Administrative Services Contract is attached to this memo. If approved, this amendment would add the following language to the existing Administrative Services Contract:

Reviewed and approved by Pam Henning, Office of Strategic Services

Signature

Date

- Article 5.19, which states that NRS will develop and implement procedures for reviewing, processing and administering DROs in accordance with the terms of the WDC Plan and Trust, Wisconsin Statutes Section 40.80(2r), the Internal Revenue Code and as approved by the WDC Board; and
- Article 4.3B, which outlines the compensation NRS will receive for administration of DROs. The fee NRS is proposing for this service is \$20,100 per year, or \$1,675¹ per month, added to the base fee for the contract year and subject to the fee increase formula in the contract. NRS will deduct compensation for the administration of DROs from the WDC's bank account.

Expected Implementation

If the Board approves the revisions to the Plan and Trust document and the amendment to the Administrative Services Contract, Department and NRS staff will work together to implement a process to divide participant accounts per DROs. An outline of the procedures NRS intends to follow when processing WDC DROs is included with the attachments. Staff recommends that the required information be formalized on a WDC form that could be sent out to participants along with a brochure containing general information on DROs and their effect on a participant's account. This information will also be placed on the WDC Web site. Implementation is planned to begin on or before August 1, 2004.

Recommendation

Staff recommends approval of the DRO-related revisions to the Deferred Compensation Plan and Trust and an amendment to the Administrative Services Contract. Approving these changes will permit the WDC to begin processing DROs.

Attachments

¹ \$1,675 per month based on an estimate of 5 DRO requests per month, each taking 5 hours/month of legal staff review at \$67/hour in the NRS home office in Ohio.

Wisconsin Plan and Trust Document Changes for DROs (May 2004)

<u>Article</u>	<u>Intent of Change</u>
Article 1.01(b)	Defines "alternate payee"
Article 1.01(h)	Defines "domestic relations order"
Article 11.01	States that the WDC Plan Administrator (Nationwide Retirement Solutions or NRS) will follow the procedures and requirements in the Plan and Trust document when determining the validity of a DRO and processing a DRO. This includes notifying the participant and alternate payee of the receipt of a DRO and making a timely determination of the validity of the DRO.
Article 11.02	<p>Explains what information must be in a valid DRO, and provides notice that only marriages terminated after December 1, 2002, can be divided.</p> <p>Explains that a DRO may assign all or part of a participant's WDC assets to a spouse, former spouse, child or other dependent to satisfy a family support or marital property obligation, provided that the WDC is named and the DRO is submitted to the WDC.</p> <p>States that that a DRO must clearly specify the following:</p> <ul style="list-style-type: none">• Name, last known mailing address, date of birth, and tax reporting number for the participant and alternate payee;• The amount or percentage, or the manner in which the amount or percentage is to be determined, of the participant's benefits to be paid to the alternate payee, not to exceed the dollar amount of the participant's account on the date the DRO is received; <p>A WDC DRO may not require:</p> <ul style="list-style-type: none">• A form of payment or any other benefit to the alternate payee that is not otherwise provided under the WDC; and• The payment of benefits to an alternate payee which are required by a prior domestic relations order to be paid to another alternate payee.
Article 11.03	Authorizes NRS to place a hold on the participant's account while NRS determines the validity of and/or processes a DRO. NRS will establish a separate account for an alternate payee and transfer the assigned value or benefit from the participant's account to the alternate payee's account.
Article 11.04	<p>States that alternate payees may receive distributions immediately upon the establishment of the alternate payee's account. Distributions made to an alternate payee will be reported as taxable income to the alternate payee, and the alternate payee will be responsible for any federal and state taxes, based upon the alternate payee's tax withholding elections.</p> <p>Provides notice that alternate payees are subject to the same rights and restrictions as other WDC participants, except as otherwise provided for in Article XI. This permits alternate payees to designate beneficiaries for the account and to exercise exchanges among the WDC investment options, for example, but specifically states that an alternate payee may <i>not</i> make contributions to his or her account.</p>
Article 11.05	Provides immunity for civil liability for the WDC Board, Department of Employee Trust Funds staff and NRS staff for any act or omission while performing duties relating to implementing DRO and for any act or omission of a participant with respect to the participant's WDC account, including specifically any deferral or investment election or distribution during the period that begins on the day on which the participant's marriage is terminated by a court order and ends on the day on which his or her account is divided pursuant to a DRO. Note: This provision is repeated from s. 40.80(2r)(d), Wis. Stats., which was created by Act 160. It also means that participants cannot appeal WDC DROs to the Board because the Board has civil liability immunity.